IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 10TH DECEMBER 2007 / 19TH AGRAHAYANA 1929

WP(C).No. 11412 of 2007(H)

CMA.48/2005 of DISTRICT COURT, KASARAGOD
.....

PETITIONER:

PADMAVATHI AMMA, AGED 65 YEARS,
W/O.LATE K.NARAYANAN NAIR, RESIDING AT
SREEPADOM, BERIKULAM, KOLATHUR VILLAGE,
KASARGOD TALUK.

BY ADV. SRI.SURESH KUMAR KODOTH

RESPONDENT:

THE AUTHORIZED OFFICER/DIVISIONAL
FOREST OFFICER, KANNUR DIVISION, KANNUR.

BY SPL.GOVERNMENT PLEADER (FORESTS)SRI.RENJITH THAMPAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 10/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KSS

WPC.NO.11412/2007 H

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE STATEMENT FILED BY THE PETITIONER BEFORE THE ENQUIRY OFFICER.**

EXT.P2: **COPY OF THE ORDER DTD. 6/10/2004 OF THE LEARNED DISTRICT JUDGE, KASARGOD.**

EXT.P3: **COPY OF THE ORDER NO.KB-6399/97 DTD. 29/01/2005 PASSED BY THE RESPONDENT.**

EXT.P4: **COPY OF THE JUDGMENT DTD. 10/11/2006 OF THE DISTRICT COURT IN CMA NO.48/2005.**

/TRUE COPY/

P.S.TO JUDGE

KSS

M.N.KRISHNAN, J

==========

W.P.(C) No.11412 OF 2007

==========

Dated this the 10th day of December 2007

JUDGMENT

This writ petition is preferred against the judgment of the District Court, Kasargod in C.M.A.No.48 of 2005 . The said C.M.A is preferred against the order of the Divisional Forest Officer, Kannur Division whereby he ordered confiscation of a mini lorry bearing Registration No.KL-14A-7416. The case had a very long career. The case of the department is to the effect that 3 teak wood trees from Muliar Beat of the Government of Kerala had been cut and removed and they have been transported to a saw mill and thereafter converted into sized timber. The case of the Department is that the vehicle mentioned above had been used for that transportation and he had done with the knowledge that it was a Government produce and therefore invoking the provisions of the Kerala Forest Act, it has been confiscated. The matter came up before the District Court on an earlier occasion and it was remanded back with a direction to give an opportunity to the owner of the vehicle to prove her stand.

2. Now the learned counsel for the petitioner would submit before me

that the evidence available in the form of statements made by the parties has not been properly analyzed and appreciated by the appellate court and only a generic discussion is done and ultimately confirmed the order of the Deputy Conservator of Forests. There appears to be considerable force in the said contention. When a vehicle is seized and it is contended by the owner of the vehicle that specific instructions had been given to the driver not to use the vehicle for any illegal transport of forest produce it is a matter which requires consideration. Similarly, when the Driver has submitted that the first statement given by him was on account of the pressure exerted on him by coercive methods and when he submits that his owner had given specific instructions to him not to use the vehicle for such purpose, it is a matter that again also has to be analyzed by the court by reading the evidence in toto. It is true that there is some evidence tendered from the side of the Department in the form of evidence of Sri.B.K.Krishnan and one Padmanabhan, who would submit that the timber was transported in the mini lorry by the driver and it was this mini lorry that was used for transporting the same. The question of deciding the case really depends upon the analysis of the evidence of all these witnesses and if the court finds it is intrinsically reliable and inherently probable evidence, that may have to be weighed and a decision has to be arrived at. But, unfortunately

in the case before me, the court below has not touched the evidence of these witnesses at all and it has resulted in the decision. Further, when the first appellate court is hearing the matter it has got the duty to reappraise the entire materials because the revisional court or the court exercising jurisdiction under Article 227 of the Constitution of India may have only a limited jurisdiction of finding whether there is any illegality or perversity.

Therefore, I find the matter requires reconsideration at the hands of the learned District Judge. Therefore, the order under challenge is set aside and the matter is remitted back to the District Court, Kasargod with a direction to consider the matter afresh after analysing the matter and decide the matter in accordance with law. If the parties intend to raise new contentions they are at liberty to do so and the court is directed to consider the same. Since the vehicle is put into use now on account of an interim order passed by this Court, I direct the learned District Judge to dispose of the C.M.A. within one month from the date of first appearance of the parties. Parties are directed to appear before the court below on 17.1.2008.

Writ petition is disposed of as above.

M.N.KRISHNAN, JUDGE

Cdp/-